

**Chevron U.S.A., Inc. and Fred S. Legg. Case 19-CA-12395**

May 8, 1981

**DECISION AND ORDER**

On January 16, 1981, Administrative Law Judge Richard J. Boyce issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.<sup>1</sup>

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Chevron U.S.A., Inc., Richmond Beach, Washington, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

<sup>1</sup> Member Jenkins would compute the interest due on backpay in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

**DECISION****STATEMENT OF THE CASE**

RICHARD J. BOYCE, Administrative Law Judge: This matter was heard before me in Seattle, Washington, on November 18, 1980. The charge was filed on May 12, 1980, by Fred S. Legg, acting in his individual capacity. The complaint was issued on June 30, and alleges that Chevron U.S.A., Inc., violated Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, by suspending Legg for 10 days in April and May 1980.

**FINDINGS OF FACT****I. JURISDICTION**

Respondent is engaged in the distribution of petroleum products from various facilities in the United States. Its annual gross income exceeds \$500,000, and it annually ships products of a value exceeding \$50,000 across state lines. Respondent is an employer engaged in and affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. THE LABOR ORGANIZATION INVOLVED**

Certain of Respondent's employees, including Legg, were represented at relevant times herein by Petroleum Workers' Union, Local 1-1978, affiliated with Oil,

Chemical and Atomic Workers' International Union, AFL-CIO. The Union is a labor organization within the meaning of Section 2(5) of the Act.

**III. THE ALLEGED UNFAIR LABOR PRACTICES****A. Evidence**

From January 15 to April 30, 1980, the Union conducted a strike at a number of Respondent's facilities in the Western United States, including its Point Wells distribution center in Richmond Beach, Washington. The strike was in aid of the Union's position in contract negotiations with Respondent. Legg, an employee at the Point Wells facility, participated in the strike.

On January 16, Legg jumped on the hood of a car leaving the Point Wells premises, remaining there while the car proceeded 1.3 miles to a stop sign. The car was driven by one of Respondent's gate guards, Tim Meeson, and was pursued by a car containing strike participants. When Meeson's car stopped at the stop sign, the pursuing car bumped into it with an undisclosed impact, after which Legg alit from the hood. Neither Legg nor anyone else was hurt, nor is there any evidence that Meeson's car incurred any damage. Legg had been picketing immediately before this incident, and assertedly was walking across the road to get coffee when Meeson's car came upon him.

Legg's suspension derived from this incident. He learned of it by letter dated March 27, signed by A. O. Rolseth, Respondent's northwest division operations manager. The letter stated:

This is to advise you that you will receive a disciplinary suspension of ten working days, which suspension shall be served at a time designated by the Company after the strike has ended.

The reasons for this suspension include your participation in the following incident. On January 16, 1980, at approximately 8:15 a.m. at the Point Wells Distribution Center, you were a participant with other unidentified persons in picketing the access to the Company property. When one of the gate guards (Tim Meeson) attempted to leave the property through the gate, you and others moved in front of his car blocking him from leaving. You jumped on the hood of Mr. Meeson's vehicle and refused to remove yourself upon numerous requests by Mr. Meeson. You remained on Mr. Meeson's hood attempting to block his vision while he was pursued by another vehicle which was ramming him from the rear. This incident could have led to a serious accident endangering the lives of Mr. Meeson, your own life and the lives of others.

The suspension began on April 30, coincident with the end of the strike. Legg returned to work on May 13.

Legg testified that he first saw Meeson's car while walking across the road at a point about 150 feet outside the gate; that it perhaps was 5 feet from him—"I don't know exactly how many feet it was"; that it was advancing at "maybe" 4 to 6 miles per hour; that, as it moved toward him, he first back pedaled, then placed his hands

on the hood and jumped onto it to save himself from being run over; and that the car may have traveled 1.3 miles to the stop sign at 15 to 20 miles per hour. Legg qualified this last assertion by stating that he was not sure of the speed, "but it was faster than I could run"—the implication being that he was compelled to remain on the hood to avoid risk of injury.

Dennis Lindsey, a King County policeman, testified that he observed the journey's last quarter mile or so from a vantage point near the stop sign; that Meeson's car was proceeding "very slow, perhaps 5 miles an hour," during the time he watched;<sup>1</sup> that Legg had one of the windshield wipers in one hand and was hitting the windshield with the other, even after the car had stopped; and that Legg stayed on the hood until commanded by Lindsey, through his car's public address system, to dismount.<sup>2</sup> In the aftermath of the incident, Lindsey charged Legg with reckless endangerment and the driver of the pursuing car with reckless driving. The record suggests that Legg thereafter was exonerated, and is noncommittal concerning the reckless driving matter.

Legg and Lindsey were the only eyewitnesses to testify. The record contains no explanation for Respondent's failure to call Meeson.

#### B. Conclusions

Legg is not credited that survival dictated his jumping onto the hood. His testimony in that regard was singularly unconvincing. It is concluded, rather, that he placed himself on the hood to harass Meeson. It is further concluded, crediting the disinterested Lindsey, that Meeson proceeded slowly enough for at least a substantial portion of the distance to have permitted Legg to dismount with safety. It is concluded, finally, again crediting Lindsey, that Legg recurrently hit the windshield during some if not all of the distance.

Conceivably, Legg's comporting himself as just described so obstructed Meeson's vision that his moving vehicle constituted a menace on the road; and, conceivably, Legg's conduct, in conjunction with the pursuing car of strikers, caused Meeson to fear that, unless he kept moving, he would be in physical peril from the strikers. Were all of this so, it might convincingly be argued that Legg had engaged in strike misconduct sufficiently serious to legitimize Respondent's action against him.

Meeson, however, did not testify; nor is there evidence otherwise that his vision was seriously impaired for any great distance or that he had cause to be apprehensive that, should he pull off the road and stop, he would be in danger from the strikers. Moreover, this was an isolated event, no one was injured, and apparently no property damage resulted. It is concluded in these circumstances that, while Legg engaged in a form of conduct that is not to be condoned, it was not of a gravity removing him from the protection of the Act. Respondent's suspension of him therefore violated Section 8(a)(3) and (1) as alleged. See, generally, *General Telephone Company of Michigan*, 251 NLRB 737 (1980); *American Cyanamid*

*Company*, 239 NLRB 440 (1978); *Larand Leisureslies, Inc.*, 222 NLRB 838 (1976); *W. C. McQuaide, Inc.*, 220 NLRB 593 (1975); *Capital Rubber & Specialty Co., Inc.*, 201 NLRB 715 (1973); *Rubin Bros. Footwear, Inc., et al.*, 99 NLRB 610 (1952).

#### ORDER<sup>3</sup>

The Respondent, Chevron U.S.A., Inc., Richmond Beach, Washington, its officers, agents, successors, and assigns, shall:

##### 1. Cease and desist from:

(a) Suspending or otherwise discriminating against economic strikers who do not engage in strike misconduct disqualifying them from entitlement to continued employment.

(b) In any like or related manner interfering with, restraining, or coercing employees in their exercise of rights under the Act.

##### 2. Take the following affirmative action:

(a) Expunge from its records, including the personnel file of Fred S. Legg, any reference to the disciplinary suspension of him that began on April 30, 1980; and notify Legg in writing that this has been done.

(b) Make Legg whole for any loss of earnings, benefits, or seniority suffered by reason of his unlawful suspension, with interest on lost earnings.<sup>4</sup>

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay and benefits owing under the terms of this Order.

(d) Post at its Point Wells distribution center, in Richmond Beach, Washington, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

<sup>3</sup> All outstanding motions inconsistent with this recommended Order hereby are denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>4</sup> Backpay is to be computed in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed as set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

<sup>5</sup> In the event the Board's Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

<sup>1</sup> Slowly enough, in Lindsey's judgment, to have permitted Legg to jump off without endangering himself.

<sup>2</sup> Legg denied hanging onto a wiper or hitting the windshield.

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

A hearing held in Seattle, Washington, on November 18, 1980, in which we participated and had a chance to give evidence, resulted in a decision that we had committed an unfair labor practice in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, and this notice is posted pursuant to that decision.

WE WILL NOT suspend or otherwise discriminate against economic strikers who do not engage in

strike misconduct disqualifying them from entitlement to continued employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in their exercise of rights under the Act.

WE WILL expunge from our records, including the personnel file of Fred S. Legg, any reference to the disciplinary suspension of him that began on April 30, 1980, and notify Legg in writing that this has been done.

WE WILL make Legg whole for any loss of earnings, benefits, or seniority suffered by reason of his unlawful suspension, with interest on lost earnings.

CHEVRON U.S.A., INC.